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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

Case No. 2004-1482

JOHN PAUL BOUIS, SR.  
6824 Jamacha Road  
San Diego, CA 92114

Vocational Nurse License No.  
VN 208647

Respondent.

**DECISION DENYING PETITION FOR RECONSIDERATION**

The Board of Vocational Nursing and Psychiatric Technicians hereby denies your Petition for  
Reconsideration of its May 20, 2011 Decision in the above-entitled matter.

This Decision shall become effective on May 30, 2011.

IT IS SO ORDERED this 27<sup>th</sup> day of May, 2011.

  
\_\_\_\_\_  
John P. Vertido, L.V.N.  
President

BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

Case No. VN-2004-1482

JOHN PAUL BOUIS, SR.  
6824 Jamacha Road  
San Diego, CA 92114

OAH No.: 2010070869

Vocational Nurse License No.  
VN 208647

Respondent.

**ORDER DELAYING DECISION**

Pursuant to Section 11521(a) of the Government Code, the Board of Vocational Nursing and Psychiatric Technicians (Board) hereby issues this Order Delaying Decision in the above-stated case until May 30, 2011. The purpose of the delay is to permit the Board to review your Petition for Reconsideration.

IT IS SO ORDERED this 19<sup>th</sup> day of May, 2011.

  
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John P. Vertido, L.V.N.  
President

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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

Case No. VN-2004-1482

JOHN PAUL BOUIS, SR.  
6824 Jamacha Road  
San Diego, CA 92114

OAH No. 2010070869

Vocational Nurse License No.  
VN 208647

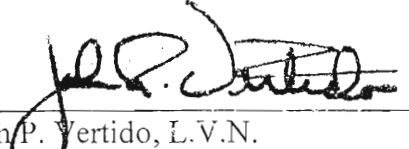
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on May 20, 2011.

IT IS SO ORDERED this 20<sup>th</sup> day of April, 2011.

  
John P. Vertido, L.V.N.  
President

BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

JOHN PAUL BOUIS, SR.,

Respondent.

Case No. VN-2004-1482

OAH No. 2010070869

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 1, 2011, in San Diego, California.

Nicole R. Cook, Deputy Attorney General, Department of Justice, State of California, represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California.

Respondent John Paul Bouis, Sr. represented himself and was present throughout the hearing.

The matter was submitted on February 1, 2011.

**FACTUAL FINDINGS**

1. On March 24, 2004, the board issued to respondent vocational nurse license number VN 208647. Respondent's license is active and renewed through April 30, 2012.
2. On October 27, 2006, complainant signed an accusation in Case No. L2006120843, which alleged that respondent was subject to board disciplinary action on the basis of a criminal conviction involving the illegal possession of controlled substances. On August 21, 2007, the board adopted the proposed decision in Case No. L2006120843. The effective date of the decision was September 20, 2007. By virtue of the decision, respondent's license was revoked, the revocation was stayed, and respondent was placed on probation for three years. The terms of probation included:

a. Respondent was to obey all laws (condition 1). Condition 1 included a requirement that respondent submit a 2" by 2" photograph of himself to the board within 30 days of the effective date of the board's decision.

b. Respondent was to file quarterly reports with the board's probation monitor (condition 2). The reports were to be submitted within seven days after the end of each calendar quarter, e.g., the report for October to December 2007 was to be submitted by January 7, 2008.

c. Respondent was to maintain employment in his licensed capacity continuously for at least six months during the probation period (condition 7).

d. Respondent was to complete certain course work within the first year of probation, as directed by the board (condition 9).

e. Respondent was to pay monthly cost recovery installment payments pursuant to Business and Professions Code section 125.3 in the amount of \$88 (condition 11).

3. On November 15, 2007, respondent met for the first time with Jesus Ibarra, his probation monitor. Ibarra reviewed with respondent all of the terms of probation. Respondent signed a form which identified the terms of his probation, via boxes check marked on the form, with certain specific terms also handwritten on the form by Ibarra. Respondent signed the form under penalty of perjury, indicating that "the terms and conditions of probation were discussed with me by a Board Representative and . . . I understand the terms and conditions to which I must abide."

4. The day after their meeting, Ibarra sent respondent a letter, summarizing the main points that were discussed at the meeting. Ibarra made specific mention of all five conditions of probation that are at issue in this proceeding. The letter stated the specific dates when quarterly reports were due, when coursework had to be completed, and when monthly monitoring costs had to be paid.<sup>1</sup>

5. On June 2, 2010, complainant signed the petition to revoke probation. The petition and other jurisdictional documents were served on respondent. Respondent submitted a notice of defense. On July 22, 2010, complainant served on respondent a notice of hearing.

6. On February 1, 2011, the record was opened, jurisdictional documents were received, sworn testimony was given, documentary evidence was introduced, closing arguments were presented, and the matter was submitted.

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<sup>1</sup> The 30-day deadline for submitting the photograph was not reiterated in the letter, but was explicitly noted on the form respondent signed at the November 15 probation meeting.

7. The evidence presented at the hearing established that respondent is in violation of the five conditions of probation set forth above.

a. Respondent was to have submitted his photograph within 30 days of September 20, 2007, the effective date of the board decision. On January 8, 2008, the board sent respondent a letter reminding him of this term of probation. He did not submit the photograph until February 2008, which was more than four months after the due date, and more than 75 days after the November 15, 2007, meeting with Ibarra. Respondent's untimely submission was a violation of the terms of his probation.

b. Respondent was to have filed his quarterly written report for the fourth quarter of 2007 by January 7, 2008. On January 8, 2008, the board sent respondent a letter reminding him of this term of probation. The report was not filed until February 8, 2008, and was thus 32 days late. Respondent's untimely submission was a violation of the terms of his probation. Respondent was to have filed his quarterly written report for the second quarter of 2008 by July 7, 2008. He did file the report by that date, but it was incomplete, and he was asked to complete and refile it, which he subsequently did. Respondent did not fail to timely file this report and did not violate the terms of his probation in that regard.<sup>2</sup>

c. Respondent was to have worked in a licensed capacity continuously for at least six months at some point during the period of his probation. On February 13, 2008, the board sent a letter to respondent reminding him of this term of probation. Another reminder letter was sent to respondent on April 26, 2010. Respondent did not work in a licensed capacity at all during his probation period. This failure was a violation of the terms of his probation.

d. Respondent was to have completed coursework in substance abuse and ethics within a year of the effective date of his probation, i.e., by September 20, 2008. On January 8, 2008, the board sent respondent a letter reminding him of this term of probation. Other reminder letters were sent to respondent on February 13 and November 7, 2008, and on January 13, 2010. Respondent did not complete the substance abuse course until December 12, 2008, and he did not complete the ethics course until February 11, 2010. Respondent's untimely completion of the two courses was a violation of the terms of his probation.

e. Respondent was to have made monthly payments of \$88, beginning in October 2007, toward the cost of his probation monitoring. On January 8, 2008, the board sent respondent a letter reminding him of this term of probation. Other reminder letters were sent to respondent on February 13 and November 7, 2008, and on January 13 and April 26, 2010. As of the date of the hearing, respondent had made payments in the total amount of \$460. Several notices were sent to respondent during 2008 to demand payment of the amount owing. As of the date of the hearing, respondent owed the board \$2,696.

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<sup>2</sup> Complainant did not allege that respondent violated his probation by submitting an incomplete report.

Respondent's failure to pay probation monitoring costs was a violation of the terms of his probation.

8. In the board's November 7, 2008, letter respondent was advised, "The Board considers your failure to comply with the terms and conditions of probation to be a serious matter, and that the board "may initiate disciplinary proceedings to revoke your probation and carry out the Disciplinary Order that was stayed, *revocation*." Respondent was directed, among other things, to submit a written statement "regarding your failure to comply with the terms of your probation no later than December 7, 2008." In the board's January 13, 2010, letter respondent was warned that if he did not respond as requested in the letter, the matter would be referred to the Attorney General's Office for the preparation of a petition to revoke probation. Again, respondent was directed to submit a written statement concerning his failure to comply. In the board's April 26, 2010, letter, respondent was advised that the board would file a request with the Attorney General's Office for the preparation of a petition to revoke probation.

9. In a letter to the board dated February 8, 2008, respondent explained that due to his son's chronic illness and hospitalization, and death in the family, he had been unable to "keep within the Guidelines of my probation." He added that "those issues have been resolved" and he requested that he be permitted to remain on probation. He added that he is the sole provider for his family. Respondent submitted no other letters to the board in explanation of his noncompliance with the terms of probation.

10. Ibarra testified at the hearing. He stated that he encourages probationers to contact him. He views his job as assisting probationers to complete their probation successfully, not as going to court to seek the revocation of probation.

Ibarra testified that he did not believe it was appropriate to extend respondent's probation. Ibarra explained that because of his personal situation and the need to care for his loved ones, respondent needed to work in the evenings or at night, and needed a flexible work schedule (e.g., so he would be able to leave at any time in order to take care of his family). Such needs were inconsistent, in Ibarra's view, with the probationary requirement (condition 7) that respondent work continuously for six months "on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved in writing by the Board."

Ibarra testified in a thoroughly professional manner. He exhibited no ill will against respondent.

11. Respondent testified at the hearing. He testified that his wife has a permanent disability that precludes her from working.

Respondent testified that his son had a serious illness which (at least at one time) required respondent to have a flexible work schedule, which working through a nurse registry provided for him. Respondent acknowledged that under the terms of his probation he could not work for a registry, but he testified that he disagreed with the board's view of

registries. He explained that from 2002 until the imposition of probation in 2007, he had been employed through a registry exclusively at two facilities, that the work was steady, and that he was always subject to appropriate charge nurse supervision.

Respondent also submitted a document listing a large number of health care facilities where he sought employment while on probation. He stated that none would offer him employment because (he believed) they did not wish to be saddled with the supervisory and administrative requirements of respondent's probation.

Respondent testified that he spoke with Ibarra at length about the registry issue. However, respondent never petitioned the board for permission to secure employment through a registry.

Respondent testified that his son's illness also distracted him so that he did not submit the photograph in a timely fashion. Respondent also testified that he did not submit the photograph because he had submitted one in 2004 with his license application and believed that was sufficient.

Respondent testified that he did not complete the courses in timely fashion because of a lack of funds. Course tuition was about \$100 per course.

Respondent testified that a lack of funds was also the reason for his failure to keep up with his probation monitoring payments. He added that several days before the hearing, he had secured the funds to pay off the entire balance of \$2,696. As of the time of the hearing, respondent had not actually made the payment, however.

Respondent testified that he believed he was an excellent candidate for continued probation. He added that the condition of his family members had gradually changed for the better within the four months preceding this hearing, so that he no longer needed the kind of flexible evening schedule he had earlier required.

12. Respondent submitted a number of reference letters and certificates that have been considered.

## LEGAL CONCLUSIONS

1. "The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners." (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856.)

2. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The burden of proof in this proceeding is thus on complainant.



3. The standard of proof required to prove the allegations in a petition to revoke probation is a preponderance of the evidence. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.)

4. Since the probation violations have been established, the board is legally authorized to rescind the stay revoke respondent's license. Under the circumstances presented, the revocation of respondent's license is warranted.

During his testimony, respondent emphasized the financial needs of his family. However, the determination whether he should be permitted to retain his license depends not on the needs of his family, but instead on the public health, safety, and protection. Respondent offered a number of unpersuasive excuses for his various probation violations, but at no time expressed remorse for them. The board was very patient with him, and gave him several reminders and warnings about the need to bring himself into compliance with the terms of his probation. He was specifically directed on several occasions to address and explain in writing his failure to comply with probation. These he generally ignored. He did not (except once in February 2008) request more time to bring himself into compliance. The explanations he provided at the hearing were not previously provided to the board.

Respondent implicitly blamed the board for his failure to secure employment, by attributing that failure to the burdensome terms of probation that he claimed no employer would accept. This attempt to transfer blame to the board was unsettling. It was respondent, not the board, who committed the crime that led to his conviction. The board, in imposing the terms of probation at issue in this case, was fulfilling its statutory mandate to protect the public.

Respondent did not provide a reasonable basis for concluding he could likely secure regular, appropriate employment as a vocational nurse. For example, he testified that his family circumstances have changed during the past four months, and yet he has not found a job during that period. Indeed, respondent has not worked one day in his field since he was placed on probation over three years ago.

Viewing the evidence as a whole, one gets the distinct impression that respondent, who was given a second chance by the board following his criminal conviction, did not fully appreciate that chance and did not take his probation with the appropriate level of seriousness it required.

It is concluded that permitting respondent another opportunity to fulfill the terms of his probation is not likely to succeed and is inconsistent with the public interest.

5. By reason of Factual Findings 1 through 12, and Legal Conclusions 1 through 4, cause exists to rescind the stay of the revocation of respondent's vocational nursing license, and to impose the revocation at this time.

ORDER

1. The stay of the revocation of respondent John Bouis' vocational nursing license number VN 208647 is rescinded.
2. Respondent's vocational nursing license number VN 208647 is revoked.

DATED: February 16, 2011



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DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 NICOLE R. COOK  
Deputy Attorney General  
4 State Bar No. 263607  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2143  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

**FILED**

JUN 2 2010

**Board of Vocational Nursing  
and Psychiatric Technicians**

8  
9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Petition to Revoke  
13 Probation Against:

Case No. VN-2004-1482

14 JOHN PAUL BOUIS, SR.  
6824 Jamacha Road  
15 San Diego, CA 92114

PETITION TO REVOKE PROBATION

16 Vocational Nurse License No. VN 208647

17 Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

22 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Petition to Revoke  
23 Probation solely in her official capacity as the Executive Officer of the Board of Vocational  
24 Nursing and Psychiatric Technicians, Department of Consumer Affairs.

25 2. On or about March 24, 2004, the Board of Vocational Nursing and Psychiatric  
26 Technicians issued Vocational Nurse License Number VN 208647 to John Paul Bouis, Sr.  
27 (Respondent). The Vocational Nurse License was in effect at all times relevant to the charges  
28 brought herein and will expire on April 30, 2012, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against: John Paul Bouis, L.V.N.," Case No. VN-2004-1482, the Board of Vocational Nursing and Psychiatric Technicians, issued a decision, effective September 20, 2007, in which Respondent's Vocational Nurse License was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118(b) provides, in pertinent part, that the expiration of a license issued by the board, shall not, during any period in which it may be renewed, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee.

6. Section 2875 provides, in pertinent part, that the Board of Vocational Nursing and Psychiatric Technicians ("Board") may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

7. This Petition to Revoke Probation is brought pursuant to Paragraph 15 of the Disciplinary Order in Case No. VN-2004-1482 referenced in paragraph 3, which states:

### Violation of Probation:

If Respondent violates the conditions of his probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed order of revocation of respondent's license. If an accusation or petition to revoke is filed against respondent's license when he is on probation or if the Attorney General's Office is requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and probation shall not expire until the accusation or petition has been acted upon by the Board.

Upon successful completion of probation, Respondent's license will be fully restored.

1 **FIRST CAUSE TO REVOKE PROBATION**

2 (Failure to Timely Submit a Photograph)

3 8. At all times after the effective date of Respondent's probation, Condition 1 stated:

4 **Obey All Laws:**

5 Respondent shall obey all federal, state and local laws, including all statutes  
6 and regulations governing the conduct of his vocational nurse license. Respondent  
7 shall submit in writing to the Board a full and detailed account of any and all  
8 violations of the law to the Board within five (5) days of occurrence. To ensure  
9 compliance with this term, respondent shall submit two (2) completed fingerprint  
10 cards and the applicable fingerprint processing fees to the Board within thirty (30)  
11 days of the effective date of the decision, unless the Board determines that  
12 fingerprint cards were already submitted by respondent as part of his licensure  
13 application process. Respondent shall also submit a recent 2" x 2" photograph of  
14 himself within thirty (30) days of the effective date of the decision.

15 9. Respondent's probation is subject to revocation because he failed to comply with  
16 Probation Condition 1, referenced above in that Respondent failed to submit a 2" x 2" photograph  
17 of himself within thirty (30) days of the effective date of the Board's Decision. A photograph  
18 was received on February 8, 2008, 111 days past due.

19 **SECOND CAUSE TO REVOKE PROBATION**

20 (Failure to Comply with Quarterly Report Requirements)

21 10. At all times after the effective date of Respondent's probation, Condition 2 stated:

22 **Compliance with Probation Program and Quarterly Report Requirements:**

23 Respondent shall fully comply with terms and conditions of the probation  
24 established by the Board and he shall cooperate with the representatives of the  
25 Board in monitoring and investigating of respondent's compliance with the  
26 Probation Program.

27 Respondent shall submit quarterly reports, under penalty of perjury, in a form  
28 required by the Board upon request. The reports shall certify and document  
respondent's compliance with all the conditions of probation.

11. Respondent's probation is subject to revocation because he failed to comply with  
Probation Condition 2, in that Respondent failed to timely submit Quarterly Written Reports,  
documenting and certifying his compliance with the conditions of probation as required for the  
following time periods: October-December 2007, due by January 7, 2008 but received on

February 7, 2008, 31 days overdue; and April-June 2008, due by July 7, 2008 but received on August 11, 2008, 36 days overdue.

### **THIRD CAUSE TO REVOKE PROBATION**

(Failure to Meet Employment Requirements)

12. At all times after the effective date of Respondent's probation, Condition 7 stated:

#### **Employment Requirements and Limitations:**

During probation Respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

During probation respondent shall not work for a nurses' registry or in any private duty position, for a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing or as an instructor in a Board approved continuing education course except as approved in writing by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved in writing by the Board.

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above, in that Respondent failed to work in his licensed capacity for a minimum of six (6) continuous months and of no less than twenty (20) hours per week. Respondent was consistently reminded of this requirement by the Board via written correspondence dated November 16, 2007, January 8, 2008, February 13, 2008, November 7, 2008, and January 13, 2010. As a result of his failure to work in his licensed capacity, he also failed to meet the conditions of Probation Condition 5 (Notification to Employer(s)) and Probation Condition 8 (Supervision Requirements).

### **FOURTH CAUSE TO REVOKE PROBATION**

(Failure to Complete Educational Course(s))

14. At all times after the effective date of Respondent's probation, Probation Condition 9 stated:

#### **Completion of Educational Course(s):**

Respondent shall, at his own expense, enroll and successfully complete an educational course substantially related to the violation no later than the end of the first year or probation; failure to complete the required coursework shall result in

1 respondent's suspension from practice until he has enrolled in and has successfully  
2 completed the specified coursework.

3 The coursework shall be in addition to the continuing professional education required  
4 for license renewal. The Board shall notify respondent of the course content and the  
5 number of contact hours required. Within thirty (30) days of the Board's written  
6 notification of assigned coursework, respondent shall submit a written plan to comply with  
7 this requirement. The Board shall approve such plan before respondent's enrollment in any  
8 course of study.

9 Within thirty (30) days of the successful completion of his course of study,  
10 respondent shall cause the instructor to furnish the proof of course completion to the Board.

11 15. Respondent's probation is subject to revocation because he failed to comply with  
12 Probation Condition 9, referenced above, in that he failed to complete the remedial education  
13 assignment within the first year of probation as required. Respondent completed the approved  
14 course relating to *Chemical Dependency/Substance Abuse* on December 12, 2008, 84 days  
15 overdue. The second course relating to *Law and Ethics* was completed on February 11, 2010, 510  
16 days overdue.

#### 17 SIXTH CAUSE TO REVOKE PROBATION

18 (Failure to Pay Costs)

19 16. At all times after the effective date of Respondent's probation, Condition 11 stated:

#### 20 **Cost Recovery Requirements:**

21 Respondent shall make timely installment payments as directed by the Board  
22 under Business and Professions Code section 125.3 for the period of probation.  
23 Payments shall be in the amount of \$88 per month, or more until payment of total  
24 costs of \$3,160 are satisfied. Failure to make payments as required by this  
25 Decision shall be considered a violation of probation.

26 17. Respondent's probation is subject to revocation because he failed to comply with  
27 Probation Condition 11, referenced above, in that Respondent failed to reimburse the Board for  
28 the costs of the investigation and enforcement. After a Demand for Payment notice dated January  
23, 2008, Respondent submitted one (1) payment of \$364.00 on February 8, 2008. After two (2)  
additional Demand for Payment notices dated July 30, 2008 and September 5, 2008 were sent,  
Respondent's Cost Recovery balance was referred to collections on October 31, 2008.


Respondent made one (1) additional payment of \$100.00 which was received on December 8, 2008. Respondent's outstanding balance is \$2,696.00.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking the probation that was granted by the Board of Vocational Nursing and Psychiatric Technicians in Case No. VN-2004-1482 and imposing the disciplinary order that was stayed thereby revoking Vocational Nurse License No. VN 208647 issued to John Paul Bouis, Sr.;
2. Revoking or suspending Vocational Nurse License No. VN 208647, issued to John Paul Bouis, Sr.;
3. Taking such other and further action as deemed necessary and proper.

DATED: June 2, 2010.



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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## **Exhibit A**

### **Decision and Order**

**Board of Vocational Nursing and Psychiatric Technicians Case No. VN-2004-1482**

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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

Case No. VN-2004-1482

JOHN PAUL BOUIS SR.  
6824 Jamacha Road  
San Diego, California 92114

OAH No. L2006120843

Vocational Nurse License  
Number VN 208647

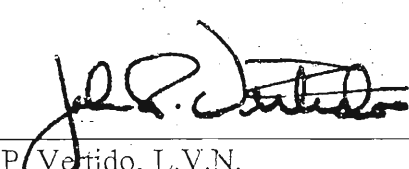
Respondent.

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on September 20, 2007.

IT IS SO ORDERED this 21<sup>st</sup> day of August, 2007.

  
\_\_\_\_\_  
John P. Vertido, L.V.N.  
President

BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOHN PAUL BOUIS, Sr., L.V.N.,

Vocational Nurse License No. VN 208647

Respondent.

Case No. VN-2004-1482

OAH No. L2006120843

**PROPOSED DECISION**

Alan R. Alvord, Presiding Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 7, 2007, in San Diego, California.

Ronald A. Casino, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California.

Respondent John Paul Bouis, Sr. represented himself and was present throughout the proceeding.

The matter was submitted on June 7, 2007.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On October 27, 2006, complainant signed the accusation. The accusation and other required jurisdictional documents were served on John Paul Bouis, Sr. (respondent or Bouis). The accusation alleged that respondent's vocational nursing license was subject to administrative discipline as a result of respondent's allegedly unlawful possession of several controlled substances in February 2005. Respondent timely filed a notice of defense and the disciplinary matter was set for hearing.

On June 7, 2007, the administrative record was opened. Jurisdictional documents were presented. Paragraph 16 of the accusation was stricken at complainant's request. Respondent admitted the truth of the allegations set forth in the accusation. Official notice was taken and sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed, and the matter was submitted.

### *License History*

2. On March 24, 2004, the Board of Vocational Nursing and Psychiatric Technicians (the Board) issued Vocational Nurse License No. VN 208647 to respondent. Vocational Nurse License No. VN 208647 is active and is renewed through April 30, 2008, unless suspended or revoked.

There is no history of any administrative discipline having been imposed against respondent's license.

### *Respondent's Unlawful Possession of Controlled Substances*

3. On February 25, 2005, at approximately 10:50 a.m., San Diego Police Officer C. Leahy observed respondent driving a Chevrolet SUV with a severely cracked windshield in the Mission Valley area of San Diego. Respondent's 14-year-old son was a passenger in the SUV. Respondent made an abrupt right turn without signaling into the Mission Valley Mall from Camino de la Reina, which resulted in a routine traffic stop.

Respondent appeared nervous, was sweating profusely, and refused to make eye contact with Officer Leahy. Officer Leahy suspected respondent might be under the influence. When Officer Leahy looked in respondent's wallet for identification, he found a plastic baggie containing a white powdery substance, later identified to be methamphetamine.<sup>1</sup> Respondent was arrested. In a search of the SUV that followed respondent's arrest, a variety of prescription drugs including Lorazepam<sup>2</sup>, Clonazepam<sup>3</sup>, and Oxazepam<sup>4</sup> were discovered. In addition, Officer Leahy found a red plastic straw which had white powder on each end of it. He concluded the straw was drug paraphernalia. Respondent told Officer Leahy that he purchased the methamphetamine earlier that day, that he had never used it before that day, and that the prescription medications were purchased in Mexico.

Respondent was charged with violating Health and Safety Code section 11377, subdivision (a) (unlawful possession of a controlled substance, methamphetamine), Health and Safety Code section 11375, subdivision (b)(2) (unlawful possession of designated

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<sup>1</sup> Methamphetamine is a highly addictive Schedule II stimulant.

<sup>2</sup> Lorazepam is a Schedule IV drug of the benzodiazepine class.

<sup>3</sup> Clonazepam a Schedule IV drug of the benzodiazepine class.

<sup>4</sup> Oxazepam is a Schedule IV drug which is a benzodiazepine derivative.

controlled substances of Lorazepam, Clonazepam, and Oxazepam), Health and Safety Code section 11364 (unlawful possession of narcotics paraphernalia), and Business and Profession Code section 4050 (possession of a controlled substance without a prescription).

4. On March 10, 2005, respondent pled guilty to violating Health and Safety Code section 11377, subdivision (a) (unlawful possession of a controlled substance, methamphetamine), Health and Safety Code section 11375, subdivision (b)(2) (unlawful possession of the three designated controlled substances), and Health and Safety Code section 11364 (unlawful possession of narcotics paraphernalia) in the Superior Court of California, County of San Diego, in Case No. CD-189311 entitled *People of the State of California v. John Paul Bouis*. Judgment was deferred for 18 months to permit respondent to enroll in and complete a drug treatment program under Penal Code section 1000.

Respondent completed the diversion program. On August 28, 2006, the criminal matter was dismissed.

#### *Respondent's Testimony and Other Evidence*

5. Respondent was born in Bay St. Louis, Mississippi, on March 1, 1959. He graduated from Bay High School. After high school, respondent enlisted in the United States Marine Corps. He was on active duty until he was honorably discharged in March 1982. He achieved the rank of staff sergeant.

Following his military service, respondent held a variety of jobs including work as a security officer and for a rescue rooter. He suffered an industrial injury that ultimately precluded him from working as a custodian.

Respondent attended Maric College from 2002 through 2003 to obtain a licensed vocational nursing license. Following his licensure in 2004, respondent worked for a nursing registry and for the San Diego County Department of Mental Health. Respondent is currently employed as a licensed vocational nurse at Alvarado Parkway Institute, Behavioral Health Services, in San Diego County.

Respondent has been married for many years. His wife is unable to work outside the home due to a disability involving her back. Respondent and his wife have three children, a 16-year-old son, a 14-year-old son, and a 12-year-old daughter. Respondent is the sole support of the family.

6. Respondent testified that on February 2005, after dropping off some friends, he drove to Mission Valley to pick up his paycheck. Respondent's son was with him in the SUV. Respondent admitted that the SUV was pulled over, searched, and that a cache of controlled substances was found on his person and in the SUV. Respondent testified the prescription medications were for his wife's chronic back pain. After first giving testimony to the contrary, respondent conceded that he had used methamphetamine shortly before his arrest. Respondent testified that he had never been addicted to drugs.

7. Respondent testified that he never used controlled substances on a regular basis and that he had not used them on a recreational basis since his arrest. Respondent claimed he was committed to abstinence based upon the totality of the circumstances related to his February 2005 arrest including his fear of incarceration and the certain knowledge of the many adverse effects of using illegal drugs.

8. After his arrest, respondent successfully completed the drug diversion program. He obtained certification in CPR. Respondent volunteers in various community organizations including the Muscular Dystrophy Association and the Easter Seals program. Respondent transports persons with neuromuscular diseases about the community and he serves as a camp nurse and a cabin elder for autistic children at Camp Cuyamaca. He enjoys being of service to the community.

9. Respondent introduced a number of reference letters and other writings from colleagues and patients to support his claim of good moral character and his skills as a licensed vocational nurse. These documents did not refer to respondent's February 2005 arrest, to his use of controlled substances, or to the steps he is taking to maintain his sobriety.

10. Respondent testified that he believed his path was to be a nurse, and that "I'm doing what God wanted me to do."

#### *Board Guidelines*

11. The preface to the Board's recommended guidelines for disciplinary orders and conditions of probation states:

"To facilitate uniformity of penalties and to ensure that its disciplinary policies are known, the Board of Vocational Nursing and Psychiatric Technicians establishes these Disciplinary Guidelines. While recognizing the concept that administrative law judges must be free to exercise their discretion in such cases, the Board requests that these guidelines be followed to the extent possible and that any departures therefrom be noted and explained in the Proposed Decision.

The Board requests that matters in extenuation and mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect the Respondent's conduct had or can have on the health, safety and welfare of California consumers."

12. The recommended disciplinary guidelines for the possession and self-administration of a controlled substance includes a maximum sanction of revocation, with the minimum recommended discipline being revocation, stayed, with two years probation on terms and conditions designed to assure the protection of the public.

13. In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the Board recommends the following factors be considered:

- Nature and severity of the act(s), offenses, or crimes under consideration.
- Actual or potential harm to the public.
- Actual or potential harm to any patient.
- Prior disciplinary record.
- Prior warnings on record or prior remediation.
- Number and/or variety of current violations.
- Mitigation evidence.
- Rehabilitation evidence.
- In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- Overall criminal record.
- Time passed since the acts or offenses occurred.
- If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

### *The Appropriate Measure of Discipline*

14. Respondent is known to have possessed and used methamphetamine in February 2005. There was actual and potential harm to the public. Respondent was not practicing nursing when he was apprehended for being under the influence and there was no known patient harm. Respondent has no record of any administrative discipline against his vocational nursing license. Slightly more than two years have passed since respondent was last known to have used methamphetamine. During that time, respondent has successfully completed a court-supervised drug diversion program which included education and drug testing.

Respondent is gainfully employed and enjoys the respect of colleagues and patients. He is the sole support of his family. Although respondent professed to be drug-free and abstinent, his evasive and contradictory testimony about his drug use and the circumstances of his arrest give rise to concerns about his truthfulness and his commitment to abstinence.

Under all the circumstances, it would not be contrary to the public interest to revoke respondent's license, to stay the revocation, and to place respondent on three years probation on appropriate terms and conditions to assure public protection and to provide an adequate

level of assurance concerning respondent's abstinence and continuing recovery. This measure of discipline was recommended by complainant's counsel and appears most appropriate.

#### *Costs of Investigation and Enforcement*

15. A certification of costs – declaration was introduced which established that approximately 20 hours of attorney time was billed by the Attorney General's Office at the rate of \$158 per hour. The deputy who tried the matter was well prepared and the hourly rate that was charged was reasonable. Total reasonable costs of enforcement are \$3,160.

### LEGAL CONCLUSIONS

#### *The Burden and Standard of Proof*

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. The preponderance of the evidence standard requires a trier of fact to believe that the existence of a fact is more probable than its nonexistence. In contrast, the clear and convincing evidence standard requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

#### *Authority to Impose License Discipline*

3. Business and Professions Code section 2878 provides part:

"The Board may suspend or revoke a license issued under this chapter for any of the following:

Unprofessional conduct . . ."

4. Business and Professions Code section 2878.5 provides in part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

Obtain or possess in violation of law, or . . . administer to himself . . . any controlled substance . . . or any dangerous drug . . ."



*Respondent's License Is Subject to Discipline*

5. Clear and convincing evidence established cause to revoke respondent's vocational nursing license under Business and Professions Code sections 2878, subdivision (a) and 2878.5, subdivision (a). A licensed vocational nurse must be honest and sober. Patient health depends upon the delivery of quality nursing services. Respondent's possession and use of a controlled substance in February 2005 involved unprofessional conduct and was substantially and adversely related to the qualifications, functions and duties of a licensed vocational nurse.

This conclusion is based on Factual Findings 4, 5 and 7 and Legal Conclusions 1-4.

*The Appropriate Measure of Discipline*

6. The public will be adequately protected by revoking respondent's license, staying the revocation, and placing respondent on probation for three years with appropriate terms and conditions of probation. This disciplinary order is consistent with the Board's guidelines and with complainant's recommendation.

This conclusion is based on Factual Findings 2-15 and on all Legal Conclusions 1-5.

*Costs of Investigation and Enforcement*

7. Business and Professions Code section 125.3 authorizes an administrative law judge to direct a licensee who has violated the applicable licensing act to pay a sum not to exceed the reasonable costs of investigation and prosecution.

8. Cause exists under Business and Professions Code section 125.3 to direct Respondent to pay to the Board its reasonable costs of investigation prosecution of \$3,160.

This conclusion is based on Factual Findings 16 and Legal Conclusions 6 and 7.

ORDER

Vocational Nurse License No. VN 208647 issued to respondent John Paul Bouis, Sr. is revoked; provided, however, that the order of revocation is stayed and respondent is placed on three (3) years probation on the following terms and conditions:

1. **OBEY ALL LAWS:** Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the conduct of his vocational nurse license. Respondent shall submit in writing to the Board a full and detailed account of any and all violations of law to the Board within five (5) days of occurrence. To ensure compliance with this term, respondent shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Board within thirty (30) days of the effective date of the decision, unless the Board determines that fingerprint cards were already submitted by

respondent as part of his licensure application process. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30) days of the effective date of the decision.

2. **COMPLIANCE WITH PROBATION PROGRAM AND QUARTERLY REPORT REQUIREMENTS:** Respondent shall fully comply with terms and conditions of the probation established by the Board and he shall cooperate with the representatives of the Board in monitoring and investigating of respondent's compliance with the Probation Program.

Respondent shall submit quarterly reports, under penalty of perjury, in a form required by the Board upon request. The reports shall certify and document respondent's compliance with all the conditions of probation.

3. **NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S):** Respondent shall notify the Board, in writing, within five (5) days, of any change of residence or mailing address, of his new address, and any change of his work or home telephone numbers. Respondent's notification shall be mailed to his assigned probation officer or to the Board's designee.

4. **NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE:** Respondent shall notify the Board, in writing, within five (5) days, if he leaves California to reside or practice in another state. Respondent shall notify the Board, in writing, within five (5) days of his return to California.

The period of probation shall not run during the time respondent is residing or practicing outside California.

5. **NOTIFICATION TO EMPLOYER(S):** When currently employed or when applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of his license and the reason for the imposition of probation. This notification to respondent's current health care employer shall occur no later than the effective date of the decision. Respondent shall notify any prospective health care employer of his probationary status with the Board before accepting such employment. This notification shall be accomplished by providing his current employer and every prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Board and shall include a performance evaluation and such other information as may be required by the Board.

Respondent shall notify the Board, in writing, within five (5) days of any change in his employment status. Respondent shall notify the Board, in writing, if he is terminated from any nursing or health care related employment and he shall provide the Board with a full explanation of the circumstances surrounding the termination.

6. **INTERVIEWS/MEETINGS WITH BOARD REPRESENTATIVE(S):** During probation respondent shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

7. **EMPLOYMENT REQUIREMENTS AND LIMITATIONS:** During probation Respondent shall work in his licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

During probation respondent shall not work for a nurses' registry or in any private duty position, for a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing or as an instructor in a Board approved continuing education course except as approved in writing by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved in writing by the Board.

8. **SUPERVISION REQUIREMENTS:** Respondent shall obtain prior approval from the Board before commencing any employment concerning the level of supervision provided to respondent while he is employed as a licensed vocational nurse. Respondent may continue to function as a licensed vocational nurse at his present employment pending approval by the Board of his current level of supervision.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs other licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel) during probation except as approved, in writing, by the Board.

9. **COMPLETION OF EDUCATIONAL COURSE(S):** Respondent shall, at his own expense, enroll and successfully complete an educational course substantially related to the violation no later than the end of the first year of probation; failure to complete the required coursework shall result in respondent's suspension from practice until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to the continuing professional education required for license renewal. The Board shall notify respondent of the course content and the number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan before respondent's enrollment in any course of study.

Within thirty (30) days of the successful completion of his course of study, respondent shall cause the instructor to furnish the proof of course completion to the Board.

10. **MAINTENANCE OF VALID LICENSE:** Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

Should respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. **COST RECOVERY REQUIREMENTS:** Respondent shall make timely installment payments as directed by the Board under Business and Professions Code section 125.3 for the period of probation. Payments shall be in the amount of \$88 per month, or more until payment of total costs of \$3,160 are satisfied. Failure to make payments as required by this Decision shall be considered a violation of probation.

12. **CHEMICAL DEPENDENCY SUPPORT/RECOVERY GROUPS:** Within five (5) days of the effective date of the Decision, respondent shall begin or shall continue to attend at a chemical dependency support group on at least a weekly basis (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group). Respondent shall submit verified documentation of attendance with each quarterly report. Respondent shall continue attendance in such a support group for the duration of probation.


13. **ABSTAIN FROM CONTROLLED SUBSTANCES:** Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

14. **SUBMIT BIOLOGICAL FLUID SAMPLES:** Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and respondent's current employer.

15. **VIOLATION OF PROBATION:** If respondent violates the conditions of his probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed order of revocation of respondent's license. If an accusation or petition to revoke probation is filed against respondent's license when he is on probation or if the Attorney General's Office is requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and probation shall not expire until the accusation or petition has been acted upon by the Board.

Upon successful completion of probation, Respondent's license will be fully restored.

DATED: July 2, 2007



ALAN R. ALVORD  
Administrative Law Judge  
Office of Administrative Hearings

**Exhibit A**

**Accusation No. VN-2004-1482**

BILL LOCKYER, Attorney General  
of the State of California  
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SHERRY L. LEDAKIS, State Bar No. 131767  
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Attorneys for Complainant

BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2004-1482

JOHN PAUL BOUIS, L.V.N.  
6824 Jamacha Road  
San Diego, CA 92114

ACCUSATION

Vocational Nurse No. VN 208647

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N., complainant, brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians.

2. On or about March 24, 2004, the Board issued Vocational Nurse License Number VN 208647 to John Paul Bouis, respondent. The Vocational Nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

5. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

6. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.



1 ...  
2 7. Section 2878.5 of the Code states:

3 In addition to other acts constituting unprofessional conduct within  
4 the meaning of this chapter, it is unprofessional conduct for a person  
5 licensed under this chapter to do any of the following:

6 (a) Obtain or possess in violation of law, or prescribe, or except as  
7 directed by a licensed physician and surgeon, dentist or podiatrist  
8 administer to himself or herself or furnish or administer to another, any  
9 controlled substance as defined in Division 10 of the Health and Safety  
10 Code, or any dangerous drug as defined in Section 4022.  
11

12 ....  
13 (c) Be convicted of a criminal offense involving possession of any  
14 narcotic or dangerous drug, or the prescription, consumption, or self-  
15 administration of any of the substances described in subdivisions (a) and  
16 (b) of this section, in which event the record of the conviction is conclusive  
17 evidence thereof.  
18

19 ....  
20 8. Section 482 of the Code states:

21 Each board under the provisions of this code shall develop criteria  
22 to evaluate the rehabilitation of a person when: (a) Considering the denial  
23 of a license by the board under Section 480; or (b) Considering suspension  
24 or revocation of a license under Section 490. Each board shall take into  
25 account all competent evidence of rehabilitation furnished by the applicant  
26 or licensee.  
27

28 9. Section 2521 of title 16 of the California Code of Regulations  
states:

For the purposes of denial, suspension, or revocation of a license  
pursuant to Division 1.5 (commencing with Section 475) of the Business  
and Professions Code, a crime or act shall be considered to be substantially  
related to the qualifications, functions or duties of a licensed vocational  
nurse if to a substantial degree it evidences present or potential unfitness of  
a licensed vocational nurse to perform the functions authorized by his  
license in a manner consistent with the public health, safety, or welfare.  
....

10. Section 2522.5 of title 16 of the California Code of Regulations states:

(a) When considering the suspension or revocation of a license on  
the ground that a licensed vocational nurse has been convicted of a crime,  
the Board, in evaluating the rehabilitation of such person and his eligibility  
for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

1 (2) Total criminal record.

2 (3) The time that has elapsed since commission of the act(s)  
3 or offense(s).

4 (4) Whether the licensee has complied with any terms of  
5 parole, probation, restitution, or any other sanctions lawfully  
6 imposed against the licensee.

7 (5) If applicable, evidence of expungement proceedings  
8 pursuant to Section 1203.4 of the Penal Code.

9 (6) Evidence, if any, of rehabilitation submitted by the  
10 licensee.

11 (b) Petition for Reinstatement. When considering a petition for  
12 reinstatement of a license under the provisions of Section 11522 of the  
13 Government Code, the Board shall evaluate evidence of rehabilitation  
14 submitted by the petitioner, considering those criteria specified in Section  
15 2522 of this article.

16 11. Section 125.3 of the Code states:

17 (a) Except as otherwise provided by law, in any order issued in  
18 resolution of a disciplinary proceeding before any board within the  
19 department or before the Osteopathic Medical Board, upon request of the  
20 entity bringing the proceeding may request the administrative law judge to  
21 direct a licensee found to have committed a violation or violations of the  
22 licensing act to pay a sum not to exceed the reasonable costs of the  
23 investigation and enforcement of the case.

24 . . . .

## 25 DRUGS

26 12. Methamphetamine is a Schedule II controlled substance as set forth in  
27 section 11055 (d)(2) of the Health and Safety Code.

28 13. Clonazepam is a Schedule IV controlled substance as set forth in section  
11057(d)(7) of the Health and Safety Code.

14. Lorazepam is a Schedule IV controlled substance as set forth in section  
11057(d)(16) of the Health and Safety Code.

15. Oxazepam is a Schedule IV controlled substance as set forth in section  
11057(d)(23) of the Health and Safety Code.

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**FIRST CAUSE FOR DISCIPLINE**  
**(March 10, 2005 Criminal Conviction - Possession of a  
Controlled Substance on February 25, 2005)**

16. Respondent is subject to disciplinary action under section 490, section 2878 subdivision (a), and subdivision (f) and section 2878.5 subdivision (c) of the Code, in that he has sustained a criminal conviction that is substantially related to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as follows:

17. On or about February 25, 2005, at 10:50 a.m., respondent was arrested when he appeared to be under the influence of a controlled substance and in possession of Methamphetamine, and several other scheduled drugs, including but not limited to Lorazepam, Clonazepam and Oxazepam. Respondent did not have a prescription for these substances.

18. On February 25, 2005, a San Diego Police Officer was on patrol in Mission Valley. He observed respondent driving a Chevrolet sports utility vehicle with a severely cracked windshield. Respondent also made a right hand turn without signaling.

19. The officer pulled respondent over and respondent informed the officer that his license was suspended. While speaking with respondent the officer noticed that the respondent showed signs and symptoms of being under the influence of a controlled substance. A search of his person resulted in the officer's discovery of a white powder, later identified as Methamphetamine. A search of respondent's car revealed a variety of prescription drugs. Respondent did not have a prescription for any of the drugs. Drug paraphernalia was also found in the vehicle. Respondent was arrested. Respondent's fourteen (14) year old son was riding in the car with him.

20. Based upon respondent's arrest, on March 1, 2005, in the case of the People of the *State of California v. John Paul Bouis*, San Diego Superior Court Case No. CD-189311, respondent was charged with the following violations of the Health and Safety Code: section 11377(a) - Possession of a Controlled Substance; section 11375(b)(2) - Possession of Designated Controlled Substances, to wit: Oxazepam, Clonazepam, and Lorazepam; and section 11364 - Possession of Paraphernalia Used for Narcotics. Respondent was also charged with violating

///

1 Business and Professions Code section 4060, - Possession of a Controlled Substance Without a  
2 Prescription.

3 21. On March 10, 2005, respondent pleaded guilty to violating Health and  
4 Safety Code section 11377(a) - Possession of a Controlled Substance, Health and Safety Code  
5 section 11375(b)(2) - Possession of Designated Controlled Substances and Health and Health and  
6 Safety Code section 11364 - Possession of Paraphernalia Used for Narcotics.

7 22. On March 10, 2005, entry of judgment was deferred for eighteen (18)  
8 months to allow respondent to enter a treatment program pursuant to Penal Code section 1000.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(February 25, 2005 - Unlawful Possession of Controlled Substance)**

11 23. Respondent is subject to disciplinary action under section 2878.5(a) of the  
12 Code, in that he unlawfully possessed a controlled substance, as more particularly set forth above  
13 in paragraphs 17 through and including paragraph 22, above.

14 **PRAYER**

15 WHEREFORE, complainant requests that a hearing be held on the matters herein  
16 alleged, and that following the hearing, the Board issue a decision:

17 1. Revoking or suspending Vocational Nurse License Number VN 208647  
18 issued to John Paul Bouis;

19 2. Ordering John Paul Bouis to pay the Board the reasonable costs of the  
20 investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3; and

22 ///

23 ///

24 ///

25 ///

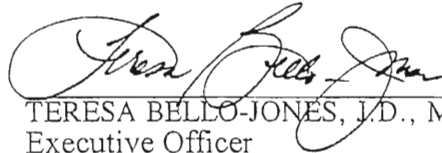
26 ///

27 ///

28 ///

3. Taking such other and further action as deemed necessary and proper.

DATED: October 27, 2006



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric  
Technicians  
State of California  
Complainant

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